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EXAMINER

FOX, JOHN C

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/744,035
Filing Date: April 20, 2001
Appellant(s): BAKI, GYOZO

Ross J. Christie
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 20, 2007 and the supplemental appeal brief filed May 14, 2008 appealing from the Office action mailed April 17, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

An Appeal in this application was decided by the BPAI on May 26, 2004.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5806552	Martin, Jr	9-1998
4804011	Knapp	2-1989
EP 0771980	Orlandi et al	5-1997
EP 0684416	Orlandi et al	11-1995

The Prior Art admitted by Appellant on page 1 of the instant specification.

The EP documents are of record in the file. EP '980 is dated 01/17/2001, has a document code FOR in eDan, and is the first document in eDan. EP '416 is also dated 01/17/2001, has a document code FOR, and is the twelfth document in eDan.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin, Jr. in view of the Prior Art admitted by Applicant on page one of the specification, see MPEP 2129.

Martin, Jr. shows a mixing faucet as shown in Figure 2. The rejection of record reads adaptor 50 as the connection element and element 80 as the insertion piece. Element 80 is axially inserted into a recess in adaptor 50 in a direction of the longitudinal axis of the valve. Either of housing 11 or the housing of the cartridge valve 10 can be fairly read as a cartridge casing, the bottom of which is read as a base. Figure 3a shows two insertion pieces of different functions. The seals are integral to element 80.

The Martin, Jr. valve is displaced and rotated in a customary manner but Martin, Jr. is not explicit about the actuation. Applicant has admitted to Prior Art including a control disc driven through a ceramic moving element by means of a driving arm pivoted in a rotatable lever holder to displace and rotate the control disc. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a Prior Art actuator to displace and rotate the Martin, Jr. control disc in that it is one of the customary means of doing so, as suggested by Martin, Jr., and under the

Art Unit: 3753

rationale set forth in *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007) that the simple substitution of one known element for another to obtain predictable results is obvious.

The provision of three of the elements 80, such as a kit to repair three leaking faucets of unknown piping, is an obvious step in view of the well recognized need for plumbers to be prepared for unexpected exigencies.

Claims 5-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin, Jr. in view of the Prior Art admitted by Applicant on page one of the specification as applied above and further in view of Knapp (US 4804011).

The dependence of claim 11 on claim 1 has been ignored since claim 1 has been cancelled.

Knapp shows a faucet with an adapter 19 which can be rotated 180° to perform a second function, or a different adapter can be selected and used to perform the second function, see column 4, lines 9-19. Knapp further teaches that three adapters may be needed for different installations and that one of the three may be selected. It would have been obvious at the time the invention was made to have made the element 80 of Martin, Jr. to be used for three different functions as taught by Knapp and to select an element from those three.

Claims 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Orlandi et al (EP 0684416).

Orlandi et al show a lever actuated faucet with three elements 12 performing different functions. Elements 12 are received and sealed in part 11 which is read as a connecting piece, and are selected for use as needed.

Claims 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin, Jr. in view of the Prior Art admitted by Applicant on page one of the specification and further in view of Orlandi et al (EP 0771980)

Martin, Jr., as modified, shows the claimed invention except for a pressure equalizer function. Orlandi et al '980 show a mixing valve having interchangeable inserts including a pressure regulating insert, which is read as a pressure equalizing insert. It would have been obvious at the time the invention was made to have used such an pressure regulating insert in the valve of Martin, Jr., as modified, to provide pressure control in the valve thereof.

"Reverting" is read as "reversing" in these claims.

(10) Response to Argument

I) Appellant presents four full pages of argument against the first ground of rejection. Much of it is to establish that Martin, Jr. does not show three insertion pieces. This argument does not show error in the rejection because the rejection does not rely on Martin, Jr. showing three insertion pieces.

Appellant argues that the "gasket 50 must be removed from the cartridge valve assembly 10 in order to remove the seal member 80". The Examiner can find no factual basis for this argument in that seal member 80 is axially inserted into the gasket 50 from its outer end, and it is readily apparent that one can simply remove it. Moreover, nothing

Art Unit: 3753

in the claims precludes the disassembly of the valve to replace the insertion piece. In fact, the disclosed cartridge would have to be removed from its assembly, as shown in Figure 1, in order to replace the claimed insertion piece.

Appellant misleadingly argues that the rejection does not teach three insertion pieces of different functions. None of these claims recite insertion pieces of different functions. Claims 5 and 6 recite "three different" insertion pieces or inserts while claim 8 recites "different interchangeable insertion pieces (10) selected from at least three insertion pieces".

It is the Examiner's opinion that "three different" things does not imply three different functions. For example, if the local Chevy dealer had three identical Tahoes on the lot, and Mr. Smith bought one, Mr. Singh bought one, and Ms. Nguyen bought one, do they all own the same car? No. There were three different cars on the lot and they own different cars, even though the three Tahoes performed the same function.

The insertion piece/seal member 80 of Martin, Jr. is for switching between straight flow and reversing flow. These are two different functions, as defined in the instant specification. This was mentioned in the rejection even though it is irrelevant to these claims.

The only real issue in the rejection is whether providing three insertion pieces is a patentable step over providing one insertion piece and flipping it over. The Examiner is of the opinion that such a step is utterly trivial and well within the ambit of §103, especially in view of the reasoning set forth in *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct.

Art Unit: 3753

1727, 82 U.S.P.Q.2d 1385 (2007) that one should use common sense in determining obviousness.

II) Appellant argues that bottom 19 of Knapp corresponds to base 9 "recited Appellant's claims". The Examiner disagrees. The claims are so broad and of such poor grammar that the recited base can be readily read on other parts of Martin, Jr. and Knapp.

Appellant argues against Knapp for having to disassemble the whole valve but, again, there is no factual difference between the cartridge valves of the instant claims, Martin, Jr. and Knapp as to their overall assembly, nor anything in the claims that gives rise to an error in the rejection because of their assembly.

Appellant points to column 1, lines 41-47 to argue that Knapp teaches a standardized cartridge valve with different bottoms. The Examiner agrees with Appellant and submits that this is the same inventive concept as the instant device, that there is nothing in the claims to distinguish over Knapp, and that the argument plainly fails to show an error in the rejection. The Examiner points again to the further disclosure at column 4, lines 9-19 of Knapp which provides sufficient support for the rejection.

III) Appellant appears to argue that valves 19' or 19" of Orlandi et al '416 are the insertion pieces or inserts and thus the claims distinguish thereover. However, the rejection is that the bottom(s) 12 are the insertion pieces or inserts. The three different embodiments disclosed in the reference, which show different bottoms 12, support the rejection.

IV) Appellant argues that the deficiencies in the base rejection make these claims allowable. However, the base rejection has been shown to be sound, so the rejection of these claims should stand.

Appellant further argues that the insert of Orlandi et al would not fit in the gasket 50 of Martin, Jr.. However, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

(11) Related Proceeding(s) Appendix

A copy of the BPAI decision of May 26, 2004 is attached.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

//John Fox//
Primary Examiner
Art Unit 3753

Conferees:

/Gregory L. Huson/

Supervisory Patent Examiner, Art Unit 3751

/Janet C. Baxter/
TC 3700 TQAS

Art Unit: 3753

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte GYOZO BAKI

Appeal No. 2004-0666
Application No. 09/744,035

HEARD: May 4, 2004

Before ABRAMS, STAAB, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 5, which
is the only claim pending in this application.

We REVERSE.

Appeal No. 2004-0666
Application No. 09/744,035

Page 2

BACKGROUND

The appellant's invention relates to a universal cartridge for a mixer faucet.

Claim 5 reads as follows:

Valve battery cartridge used for mixing cold water and warm water, comprises two discs (5,6) arranged one above the other to form a plane sealing together, wherein the lower disc (6) is a stationary inlet disc and the upper disc (5) is a control disc which is displaceable and rotatable on the inlet disc; where the control disc (5) is in mechanical connection with a driving arm (1) pivoted in a lever holder (2) through a ceramic moving element (4), the lever holder (2) is rotatably arranged in a cartridge casing (3), the base (9) of the cartridge casing (3) is formed with a connection element (14) for receiving an interchangeable insertion piece (10), wherein an opening for receiving the interchangeable insertion piece in the connection element is formed in a direction which is substantially parallel with a longitudinal axis of the cartridge, wherein the connection element (14) in the base (9) of the cartridge casing (3) receives the interchangeable insertion piece (10) which enables connection between connection ducts (13) in a valve battery body (12) and inlet openings, and wherein a longitudinal axis of the interchangeable insertion piece is substantially parallel to the longitudinal axis of the cartridge in the base (9) and the base (9) is provided with seal means (11) insulating the connection element from an inner space of the valve battery body (12).

Claim 5 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S.

Patent No. 5,806,552¹ to Martin, Jr. (Martin).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the final

¹ Issued September 15, 1998.

Appeal No. 2004-0666
Application No. 09/744,035

Page 3

rejection (Paper No. 18, mailed February 11, 2003) and the answer (Paper No. 22, mailed August 6, 2003) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 21, filed July 14, 2003) and reply brief (Paper No. 23, filed August 15, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art patent to Martin, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As stated in In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (quoting Hansgirk v. Kemmer, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939)) (internal citations omitted):

Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. If, however, the disclosure is sufficient to show that the natural result flowing from the operation as taught would result in the performance of the questioned function, it seems to be well settled that the disclosure should be regarded as sufficient.

Appeal No. 2004-0666
Application No. 09/744,035

Page 4

Thus, a prior art reference may anticipate when the claim limitation or limitations not expressly found in that reference are nonetheless inherent in it. See In re Oelrich, 666 F.2d at 581, 212 USPQ at 326; Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 630, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates. See In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). However, inherency is not necessarily coterminous with the knowledge of those of ordinary skill in the art. See Mehl/Biophile Int'l Corp. v. Milgraum, 192 F.3d 1362, 1365, 52 USPQ2d 1303, 1305-06 (Fed. Cir. 1999); Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946-47 (Fed. Cir. 1999).

Martin's invention relates primarily to fluid valves which control the mixing of hot and cold water wherein the flow path of the hot and cold water can be reversed (e.g., to facilitate back to back type installation in adjacent bathrooms). An adapter gasket is provided which has three independent pathways. In one position, the adapter effects respective fluid communication between hot and cold water inlet pipes and hot and cold water inlets in the stationary valve portion. In a second position, when the adapter gasket is removed from the valve body and turned over, communication between the hot and cold water inlet pipes and the hot and cold water inlets in the stationary valve portion is reversed. In both positions, the adapter gasket also effects communication

Appeal No. 2004-0666
Application No. 09/744,035

Page 5

between the outlet of the valve and the outlet of a valve housing, and further it seals all connections at all times.

Figures 1 and 2 of Martin show a cartridge valve assembly 10 in conjunction with a faucet housing 11 that is mounted on a support 12 in the usual manner. The direction arrows in Figure 2 illustrate the pathway of water through the cartridge valve assembly 10 from the control unit 17 which supplies hot and cold water to the hot and cold inlets 23 and 24, respectively, in the faucet housing 11. Water travels upwardly through the valve assembly 10 and downwardly through the outlet 41 in the stationary disk 40, the outlet 26 in the base 32 of the valve, outlet 29 in the adapter gasket 50 and outlet 25 in the faucet housing 11 to where it returns to the control unit 17. There it will feed water to outlets 20 and 21 for a tub and shower fixture.

As best seen in Figures 1 and 3, a valve stem 18 extends upwardly from the cartridge valve assembly 10 and through the bonnet 15 for a connection with the handle 14. Martin teaches (column 3, lines 24-28) that:

The valve stem 18 controls the usual movable ceramic disk 43 with water passage 48 for movement over a stationary disk 40 as seen in Figure 2 for control of water from inlets 46 and 47 of disk 40 (See Figures 7 and 8) to outlet 41 in a customary manner.

Appeal No. 2004-0666
Application No. 09/744,035

Page 6

In accordance with Martin's invention, and referring particularly to Figures 2, 3, 3A, and 3B, positioned below the base 32 of cartridge valve assembly 10 is an adapter gasket 50, which like valve assembly 10 fits into the valve housing 11. Guides 38 and 39 extending from base 32 fit into guide pockets 73 and 74 of the insert 51 of adapter 50. Guideposts 70 and 71 of insert 51 in turn fit into guide openings 16 and 22 of valve housing 11. Referring specifically to Figure 3A, extending through insert 51 is the previously described water outlet passage 29 as well as water inlet passages 56 and 57. These inlet passages and outlet communicate with a cavity 54 which receives a seal member 80. Surrounding outlet 29 and inlet passages 56 and 57 in the cavity are raised sealing sleeves 62, 61, and 60. There are in addition two raised annular sealing sleeves 65 and 66. These annular sealing portions 65 and 66 align with the inlets 23 and 24 of the valve housing 11 when insert 51 is placed thereon. Seal 80 has a pathway 81 which, when placed in the cavity 54, surrounds sleeve 62 of outlet passage 29. Seal 80 also includes two elliptical pathways 82 and 83 for surrounding the raised sleeves 61 and 60 of inlet passages 56 and 57 and the raised annular sealing sleeves 65 and 66 in a paired manner. This is best seen when viewing Figures 5A and 5B.

The appellant argues (brief, pp. 5-6) that Martin does not (1) anticipate the arrangement of two discs one above the other to form a plane sealing; (2) suggest that the lower disc be a stationary inlet disc and the upper disc be a control disc which is

Appeal No. 2004-0666
Application No. 09/744,035

Page 7

displaceable and rotatable on the inlet disc; (3) anticipate that the control disc is in mechanical connection with a driving arm pivoted in a lever holder to a ceramic moving element; (4) anticipate that the lever holder is rotatably arranged in a cartridge casing; (5) anticipate an arrangement as set forth above wherein a base of the cartridge casing is formed with a connection element for receiving an insertion piece; and (6) anticipate an interchangeable insertion piece as claimed which is critical to the "universal" nature of the valve battery cartridge of the present invention. In essence, the appellant asserts that Martin does not show each and every claimed feature of the valve battery cartridge claimed in independent claim 5.

The appellant then states that during the prosecution of the instant application he has continuously requested the examiner to read Martin on the claimed subject matter, that is, point out the corresponding element in Martin for each and every element claimed in claim 5. The appellant asserts that the examiner has not done this and that the appellant cannot find in Martin each and every element as claimed.

The examiner's response to the appellant's argument (answer, p. 4) is as follows:

Martin, Jr. show a hot and cold mixing valve for mixing hot and cold water, see column 1, first sentence of the first paragraph. A movable valve element is rotatable to regulate flow from the hot and cold water inlets to the outlet, see column 1, lines 42-43. A movable disc 48 [sic, 43] forms a sealing plane with a stationary disc 40 below it to control the flow from the inlets to the outlet. Ergo, movable disc is rotatable.

Appeal No. 2004-0666
Application No. 09/744,035

Page 8

Martin, Jr. is primarily concerned with the adaptor 50 and seal 80 and is brief in explaining the operation of the valve. The movable disc 48 [sic, 43] is rotated by stem 18, and Figure 1 shows the handle 14 at an angle to the stem, which suggests pivoting of the stem. Martin, Jr. say the valve works in "a customary manner".

Valves of this type, which rotate to modulate the water temperature and pivot to control the flow rate, and use a ceramic holding plate to hold the movable disc, are well known. EP 0 684 416 and Boiso '958, each of record, clearly show such customary features. Further, these features are recited in the preamble of [original] claim 5, which is a Jepson type claim and which indicates these features are known in the Prior Art.

A routineer in the art would therefore reasonably conclude that Martin, Jr. includes these customary features.

It is clear to us that each and every element as set forth in claim 5 is not found, either expressly or inherently described, in Martin. While Martin does state that his valve works in "a customary manner," Martin does not disclose, either explicitly or inherently, such structure. Specifically, Martin does not disclose a control disc, which is displaceable and rotatable on the inlet disc, in mechanical connection with a driving arm pivoted in a lever holder through a ceramic moving element wherein the lever holder is rotatably arranged in a cartridge casing. As such, claim 5 is not anticipated by Martin.²

² We note that no rejection of claim 5 under 35 U.S.C. § 103 is before us in this appeal. Accordingly, there is no need in this appeal to decide if it would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Martin to have arrived at the claimed invention based on either EP 0 684 416, Boiso '958, or the admitted prior art set forth in the preamble of original claim 5, which was drafted as a Jepson type claim. Note, In re Fout, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

Page 9

CONCLUSION

REVERSED

) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES

Application/Control Number: 09/744,035
Art Unit: 3753

Page 18

Appeal No. 2004-0666
Application No. 09/744,035

Page 10

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Application/Control Number: 09/744,035
Art Unit: 3753

Page 19